



# 2016-007

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE  
ATTORNEY GENERAL

October 21, 2015

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Honorable Don Davis  
Judge of Probate  
Probate Court of Mobile County  
109 Government Street  
Post Office Box 7  
Mobile, Alabama 36601

Probate Judges – Recordation Tax –  
Leases – Rent

Recordation tax should be based on the rent paid for years 16 to 20 and the rent to be paid during the lease term should be brought to present value. Present value is calculated using the annuity or present value tables published pursuant to section 35-16-1 of the Code of Alabama.

Dear Judge Davis:

This opinion of the Attorney General is issued in response to your request.

### QUESTIONS

(1) If a lease is recorded in the 16th year of its 20-year term, is the recording tax based on the rent paid for years 16 to 20 or the entire 20 years?

(2) When calculating the recording tax for a lease, is rent to be paid during the lease term brought to present value, and if so, how is the present value calculated?

FACTS AND ANALYSIS

These questions arise out of a document entitled *Memorandum of Lease* (“MOL”) presented for recordation to your office between two corporate entities. The above-mentioned document incorporates, by reference, a previously unrecorded 20-year lease of the same property dated January 5, 1999. The amended lease presented for recordation is dated April 29, 2015, with an end date of January 31, 2020. Your office determined the amount of tax due for the recordation of the document was the sum of \$5,556. The parties associated with the instrument agreed to pay the amount under protest in two separate payments. The first payment was in the amount of \$1,502 and the second payment was in the amount of \$4,054, which is the amount in dispute. Upon receipt of the document and payment of tax, the probate court recorded the instrument and requested an opinion in response to the above-mentioned questions.

Section 40-22-1(a) of the Code of Alabama states, in pertinent part, as follows:

[N]o deed, bill of sale, or other instrument of like character which conveys any real or personal property within this state or which conveys any interest in any such property, except the transfer of mortgages on real or personal property within this state upon which the mortgage tax has been paid, . . . shall be received for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record. . . .

ALA. CODE § 40-22-1(a) (Supp. 2014).

This Office has long reasoned that section 40-22-1 of the Code imposes a privilege tax upon the recording of instruments such as leases. Under Alabama law, recordation tax due is on the recordation of the documents themselves, not the underlying transactions. *See Sustainable Forests, LLC v. Alabama Dep't of Revenue*, 80 So. 3d 270 (Ala. Civ. App. 2011). As previously mentioned, the document presented for recordation is entitled *Memorandum of Lease*, and it mentions a previous unrecorded lease that was dated January 5, 1999. This document, however, was not recorded in the Probate Judge's Office until June 23, 2015. Thus, the document itself offered for recordation only covers from June 23, 2015, to

January 31, 2020. In other words, the lease offered for recordation does not provide public notice of the lease agreement until June 23, 2015.

This Office has previously determined in an Attorney General's opinion to Honorable Frank H. Riddick, Madison County Judge of Probate, dated July 29, 1993, A.G. No. 93-00280, that recordation tax should be assessed on an assignment of lease when presented for filing, and the tax should be based on the remainder of the term of the lease at the time of recording. The present situation, although not an assignment of lease, does involve the remaining period of a lease offered for recordation. There is no legal requirement to record a lease agreement. The tax is imposed for the privilege of recording the instrument. Because the lease was not recorded until the sixteenth year of the lease and the lease has a term of expiration on January 31, 2020, the recordation tax due should be based on the rent paid for the period the instrument actually covers. In response to the first question, recordation tax should be based on the rent paid for years 16 to 20.

With respect to your second question, this Office has reasoned as follows:

In the case of the recordation of a lease, the tax is based upon the value of the interest in the property conveyed. The value of the interest conveyed by a lease can be determined by the same means utilized to determine the present value of annuities. . . . This is usually done by referring to annuity or present value tables such as are published pursuant to § 35-16-1, Code of Alabama 1975. . . .

*See* opinion to Honorable George R. Reynolds, Jefferson County Judge of Probate, dated January 21, 1992, A.G. No. 92-00133. Thus, when calculating the recording tax for a lease, the rent to be paid during the lease term should be brought to present value, and present value is calculated using the annuity or present value tables published pursuant to section 35-16-1 of the Code.

### CONCLUSION

Based on the foregoing, recordation tax should be based on the rent paid for years 16 to 20 and the rent to be paid during the lease term

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should be brought to present value. Present value is calculated using the annuity or present value tables published pursuant to section 35-16-1 of the Code of Alabama.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact W. William Young, Legal Division, Department of Revenue.

Sincerely,

LUTHER STRANGE  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

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